

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Andrew Schneider	Team: Team # 8	CCRB Case #: 200603382	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/15/2006 9:45 AM	Location of Incident: Belmont Avenue and Mother Gaston Boulevard	Precinct: 73	18 Mo. SOL 9/15/2007	EO SOL 9/15/2007	
Date/Time CV Reported Thu, 03/16/2006 4:27 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 03/16/2006 4:27 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Virgil Cumberbatch	05766	897278	NARCBBN
2. POM Ronald Bannister	13431	905754	NARCBBN
3. SGT Roy Bocina	00579	917315	NARCBBN
4. POM Angelo Cuzzo	14638	918580	NARCBBN
5. POM Christopher Castle	05317	928041	NARCBBN

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Virgil Cumberbatch	Abuse: Detective Virgil Cumberbatch stopped § 87(2)(b) and § 87(2)(b)	
B.DT3 Virgil Cumberbatch	Force: Detective Virgil Cumberbatch used a chokehold against § 87(2)(b)	
C.DT3 Virgil Cumberbatch	Force: Detective Virgil Cumberbatch used physical force against § 87(2)(b)	
D.DT3 Virgil Cumberbatch	Force: Detective Virgil Cumberbatch used physical force against § 87(2)(b)	
E.SGT Roy Bocina	Force: Sergeant Roy Bocina used physical force against § 87(2)(b)	
F.POM Ronald Bannister	Force: Police Officer Ronald Bannister used physical force against § 87(2)(b)	
G.POM Christopher Castle	Force: Police Officer Christopher Castle used physical force against § 87(2)(b)	
H.POM Angelo Cuzzo	Force: Police Officer Angelo Cuzzo used physical force against § 87(2)(b)	

Synopsis

On March 15, 2006, § 87(2)(b) walked into the El Dorado Restaurant, located at 109 Belmont Avenue in Brooklyn, at about 9:45AM. He walked to the counter and ordered a cup of coffee. A man identified as § 87(2)(b) was sitting next to him, playing games on his cell phone. Moments later two black male officers in plainclothes – identified through investigation as Det. Virgil Cumberbatch and Det. Ronald Bannister – entered the restaurant. Det. Cumberbatch stopped § 87(2)(b) (Allegation A) and placed him into a chokehold (Allegation B). Det. Cumberbatch threw § 87(2)(b) to the ground (Allegation C). Det. Cumberbatch then stopped § 87(2)(b) (Allegation A), grabbed one of his hands, struck him in the face, handcuffed him, and then slammed him to the ground (Allegation D). Det. Cumberbatch then allegedly stomped on § 87(2)(b) head. Sgt. Roy Bocina had arrived on scene, and used physical force against § 87(2)(b) (Allegation E). Meanwhile, Det. Ronald Bannister was allegedly kicking § 87(2)(b) (Allegation F). Det. Christopher Castle and Det. Angelo Cuzzo both used some physical force to restrain § 87(2)(b) (Allegation G and Allegation H, respectively).

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) a § 87(2)(b) old Hispanic male w § 87(2)(b) made several statements to medical personnel shortly after his arrest. The statements are reproduced below in chronological order. According to the ambulance call report, § 87(2)(b) stated that a “cop hit him,” and was complaining of “dizziness after a police officer hit him during arrest” (encl. 8 a). According to the § 87(2)(b) triage form, § 87(2)(b) stated “he was beaten up in jail” (encl. 8 b). According to another document from § 87(2)(b) § 87(2)(b) attributed his injuries to having been “kicked and beaten up by an officer” (encl. 8 c).

§ 87(2)(b) appeared in person at the CCRB on March 16, 2006 and provided an official statement (encl. 9 a-f). § 87(2)(b) a recovering heroin addict, stated that on the morning of March 15, 2006 he went to his methadone clinic § 87(2)(b) § 87(2)(b) then walked into the El Dorado restaurant, § 87(2)(b) § 87(2)(b) stated that the methadone does not affect his mental awareness, but simply “takes the edge off.”

At sometime between 9:45AM and 10:30AM, § 87(2)(b) walked inside the restaurant and stood at the counter. § 87(2)(b) was approximately five feet from the door, which was to his left. The front of the restaurant is windowed, allowing visibility inside from the street. § 87(2)(b) stated that he saw the owner of the restaurant inside, along with several waitresses. In addition, there were a few other customers. At the time of his interview he only recalled seeing a man he only knows as “§ 87(2)(b) § 87(2)(b) denied ever speaking to § 87(2)(b) whom the investigation has identified as § 87(2)(b) According to arrest records, a man named § 87(2)(b) was also sitting inside the restaurant. (Several days after his interview, § 87(2)(b) called the undersigned investigator and provided the names and telephone numbers for nine

witnesses who were allegedly inside the El Dorado. § 87(2)(b) made no mention of these witnesses during his interview.)

§ 87(2)(b) leaned over the counter to order a cup of coffee from the waitress. He had a dollar bill in his hand, because he was about to order. Just before he could place his order, several officers in plainclothes entered the restaurant. The officers did not identify themselves at first. One officer, described as a 5'7"-tall, 195-pound black male with short black hair and facial hair, approached § 87(2)(b) and grabbed his left arm. Based on the description and the officer's testimony, the investigation has identified this officer as Det. Cumberbatch. § 87(2)(b) left side was facing Det. Cumberbatch and § 87(2)(b) turned his head to look at him. Det. Cumberbatch put § 87(2)(b) left arm behind his back and started to twist it. Det. Cumberbatch did not give any verbal commands.

§ 87(2)(b) then put his right hand in front of his face, with his palm facing Det. Cumberbatch and said, "Wait a minute." Det. Cumberbatch promptly hit § 87(2)(b) in the face with his elbow § 87(2)(b) could not remember where on his face he was hit). Upon the blow, § 87(2)(b) right hand fell limply to his right side. Det. Cumberbatch grabbed the right arm and quickly rearcuffed § 87(2)(b) wrists.

Det. Cumberbatch then picked up § 87(2)(b) by lifting on the handcuffs and § 87(2)(b) right shoulder and slammed him down face-first to the floor. Det. Cumberbatch placed one foot on § 87(2)(b) lower back and with the other foot began stomping on § 87(2)(b) face. Det. Cumberbatch stomped five or six times. § 87(2)(b) initially stated that the officer stomped on his face with boots, but later claimed not to recall what type of shoes Det. Cumberbatch was wearing. § 87(2)(b) denied resisting the officer at any point.

§ 87(2)(b) did not lose consciousness, but "nearly blacked out" for a short period of time. § 87(2)(b) heard someone say, "Look, he's dead," followed by laughter from the officers. One or two officers picked § 87(2)(b) off the ground and placed him on his feet. An officer grabbed § 87(2)(b) left arm and twisted it upwards, causing substantial pain. § 87(2)(b) described this officer as a 5'6"-tall, 180-pound white male with glasses. The investigation has identified this officer as Sgt. Bocina.

§ 87(2)(b) did not observe what the other officers were doing in the restaurant but at one point he saw a 5'9"-tall, 200-pound black male with freckles and a beard kicking § 87(2)(b). The investigation has identified this officer – on account of the description – as Det. Bannister. Moments later, the officers moved § 87(2)(b) into a white, unmarked van along with § 87(2)(b) and another prisoner, whose name § 87(2)(b) did not know, but who the investigation has identified as § 87(2)(b).

§ 87(2)(b) was driven to the 73rd Precinct station house, where he was fingerprinted. § 87(2)(b) stated that he was asking every officer he saw for medical treatment. According to § 87(2)(b) every officer said, "Later." Half an hour later an ambulance arrived to bring § 87(2)(b) to the hospital. An officer escorted § 87(2)(b) to § 87(2)(b). § 87(2)(b) did not know if he saw his escorting officer at the El Dorado. At § 87(2)(b) § 87(2)(b) received X-rays of his chest, back and side. § 87(2)(b) also received a CAT scan of his head and a doctor wrote him a pain medication prescription. The doctor informed § 87(2)(b) that one his left ribs was "cracked" and that his jaw was bruised. § 87(2)(b) also complained of headaches and a black eye. § 87(2)(b) did not know how he sustained the black eye. § 87(2)(b) stated that the bruising to his jaw, the headaches and cracked rib he sustained while Det. Cumberbatch stomped on his head and standing on top of him. § 87(2)(b) was at § 87(2)(b) for several hours. Medical personnel told § 87(2)(b) that no one was available to read the results of the CAT scan. According to § 87(2)(b) the officer who was escorting him did not want to wait, and took § 87(2)(b) out of the hospital. Two uniformed officers drove § 87(2)(b) in a marked van, by himself, to Brooklyn Central Bookings.

At Central Booking § 87(2)(b) learned that the officers charged him with drug possession. § 87(2)(b) learned that the officers made up a story in which § 87(2)(b) had given § 87(2)(b) a quantity of drugs in exchange for money immediately prior to the officers' entry. Once the officers were in the restaurant, § 87(2)(b) took the drugs back out of § 87(2)(b) hand, swallowed them, and returned § 87(2)(b) money. § 87(2)(b) denies that he bought any drugs from § 87(2)(b) stating that he was simply trying to buy a coffee at the counter and that – as he later found out – § 87(2)(b) had simply swallowed a couple of

Tylenol. § 87(2)(b) added, “That don’t make no sense. If I bought drugs and the police come, I’m going to eat it. He’s not going to take it from my hand.”

According to § 87(2)(b) the possession charge was dropped, leaving one charge of resisting arrest. § 87(2)(b) said his resisting arrest charge was also dismissed and will be thrown out on § 87(2)(b). Immediately after leaving Central Booking he called his nephew, who gave him the address of the CCRB.

§ 87(2)(b) filed a notice of claim seeking ten million dollars in damages on § 87(2)(b) (encl. 11 a-d). According to the notice, “At the El Dorado Restaurant on March 15, 2006 at approximately 9:30AM the Claimant was placed under arrest by Defendant police officers and in the course of such arrest the Claimant was battered and assaulted by the Defendant police officer.”

Results of Investigation

Witness Statements

§ 87(2)(b) a § 87(2)(b) old black § 87(2)(b), was interviewed over the telephone on April 26, 2006 (encl. 12 a-b). § 87(2)(b) stated that at 10:30AM on March 15, 2006 he was inside the El Dorado restaurant. He was ordering a cup of coffee on his way to work. After ordering, § 87(2)(b) was playing a game on his cell phone at the counter, waiting for the drink. § 87(2)(b) was not talking to § 87(2)(b) because he “does not know him.” § 87(2)(b) said that six officers in plainclothes entered the restaurant, although he also said that the officers approached him from behind and he could not see them.

§ 87(2)(b) stated that a husky, 6’-tall black male officer walked right behind him, wrapped his arm around his neck and placed him in a chokehold. The investigation has identified this officer as Det. Cumberbatch, based on the officer description and that officer’s testimony. § 87(2)(b) later said, however, that he did not know who choked him. Moments later, a husky, 6’-tall white male picked § 87(2)(b) up from his front side and “threw” him down to the ground. Because no officer matches this description and because Det. Cumberbatch admitted to bring § 87(2)(b) to the ground, Det. Cumberbatch has been identified as the officer who did so. § 87(2)(b) landed face first and officers (whom he could not see) started to kick and stomp on him. § 87(2)(b) remembered five to seven kicks. Eventually an officer placed one foot on his back and one on his neck. § 87(2)(b) had difficulty breathing and informed the officers of that, but they did not help him. After some period of time, the officers handcuffed § 87(2)(b) and “dragged him to his feet.” § 87(2)(b) denied ever resisting or fighting the officers.

§ 87(2)(b) was brought outside and placed in a van. § 87(2)(b) and two other individuals had also been arrested as well. § 87(2)(b) knows one of the men as § 87(2)(b) who was buying an egg sandwich just before the officers entered. § 87(2)(b) denied that anyone was selling or in possession of drugs in the restaurant. § 87(2)(b) reported injuries of neck and back pain, and having had headaches for five or six days after his arrest but he never asked the officers for medical attention.

At his arraignment, § 87(2)(b) was given an § 87(2)(b). The drug sale charge had been dropped by the time he got to Central Booking. After leaving Central Booking, § 87(2)(b) went, on his own, to § 87(2)(b) where he received pain medication and a muscle relaxant.

§ 87(2)(b) did not know anything about § 87(2)(b) arrest other than that two officers arrested him, and used force in doing so.

§ 87(2)(b) provided a telephone statement on March 22, 2006 (encl. 13). On the morning of March 15, 2006 he was sitting inside the El Dorado restaurant, about ten to fifteen feet away from the counter. A man § 87(2)(b) knows as § 87(2)(b) was standing at the counter. § 87(2)(b) and § 87(2)(b) know each other from the restaurant because they often get their food from there. There were no more than six people inside the restaurant, including the staff.

Eventually § 87(2)(b) saw two officers in plainclothes walk in the restaurant. There were also two officers standing outside. The detectives were looking for drugs in the restaurant although he could not explain what they did that made him believe so. § 87(2)(b) saw the two detectives, both black males, walk up to § 87(2)(b). He described one officer as being 6' tall, having a light complexion and a husky build. The investigation has identified his officer as Det. Bannister. The other, described as being 5'10" tall with a medium build and darker complexion, has been identified as Det. Cumberbatch, based on the description. § 87(2)(b) was "just standing there" and may not have seen the officers. The officers did not say anything to § 87(2)(b) but grabbed § 87(2)(b) and slammed his head into the counter. Both of the officers started to push § 87(2)(b) to the ground. § 87(2)(b) did not see § 87(2)(b) resist or fight back. Eventually the two officers pushed § 87(2)(b) all the way to the ground and handcuffed him. The officers brought § 87(2)(b) out of the restaurant and took him straight to "Central Booking." To § 87(2)(b)'s knowledge, § 87(2)(b) had suffered a broken jaw from the encounter.

§ 87(2)(b)

§ 87(2)(b) who provided a telephone statement on March 27, 2006 (encl. 14), was sitting in the rear of the El Dorado Restaurant at the time of the incident. § 87(2)(b) asked § 87(2)(b) if he would testify as a witness to the arrest, but when asked by the undersigned investigator, denied that the two had discussed the incident at all. § 87(2)(b) described § 87(2)(b) as a friend.

§ 87(2)(b) saw two officers walk into the restaurant, walk up and down the aisles, looking for § 87(2)(b) and two other individuals. Eventually the officers spotted § 87(2)(b) at the front of the restaurant, at the counter, and rushed over to him. The two officers were joined by three other officers by the time they reached § 87(2)(b). § 87(2)(b) never heard the officers give any verbal commands. Three officers – a "tall" black male, a "short" black male and a white male – began attacking § 87(2)(b). Those three officers were jumping on him and punching him before they slammed his head on the counter. § 87(2)(b) could not attribute specific actions to the officers. The officers then pushed § 87(2)(b) to the ground and began kicking and stomping on his face. § 87(2)(b) was "trying to free himself" from the officers. § 87(2)(b) saw officers "kick and stomp on" other men who were being arrested, but he could not provide any details. According to § 87(2)(b) the officers grabbed a "white guy" as he walked into the restaurant and promptly slammed his head against the counter, too.

§ 87(2)(b)

§ 87(2)(b) provided a telephone statement on March 27, 2006 (encl. 15) stated that on the morning of the incident he was sitting inside the El Dorado restaurant, eating some food. § 87(2)(b) was approximately seven feet away from the counter, where he saw § 87(2)(b) ordering some food as well. § 87(2)(b) knows § 87(2)(b) from the methadone clinic they both attend. § 87(2)(b) saw at least five police officers walk into the El Dorado.

§ 87(2)(b) stated that the officers were very disrespectful to the patrons of the restaurant, many of whom also participate in the methadone clinic in the neighborhood. § 87(2)(b) saw three officers – two black males in uniform and a white or Hispanic male – walk up to § 87(2)(b) and push him to the ground.

§ 87(2)(b) first saw § 87(2)(b) in handcuffs when the officers were walking § 87(2)(b) out of the restaurant. He later said, however, that the three officers handcuffed § 87(2)(b) while he was still standing and then threw him to the ground. Regardless, § 87(2)(b) saw one of the three officers (he was not sure which one) pinning § 87(2)(b) down by placing a knee in his back. Several other officers whom § 87(2)(b) could not describe were instructing the customers of the restaurant to either "step back" or "go outside." One officer told the customers, "You don't belong here." § 87(2)(b) observed one officer, an Asian male in uniform, just standing in the background.

Results of Canvass:

The undersigned investigator conducted a canvass of the incident location on May 22, 2006. The El Dorado Restaurant was out of business, with a metal gate pulled over its front window. There was a "for sale" sign placed over the metal gate, with a telephone number. A later call to the number connected the undersigned investigator with a man who said he is managing the sale of the property, but who refused to

identify himself or speak with the investigator. Canvasses of nearby grocery stores did not locate any witnesses. Canvass letters posted around the incident location did not produce any witnesses.

Witnesses not Interviewed:

The undersigned investigator made numerous attempts to contact the remaining witnesses provided by § 87(2)(b). Each individual was unavailable at the provided telephone numbers, and queries of various databases did not yield any additional contact information.

Officer Statements

Det. Virgil Cumberbatch of the Brooklyn North Narcotics Division:

Det. Cumberbatch, a 5'6"-tall, 225-pound black male with black hair and a goatee, was interviewed at the CCRB on June 15, 2006 (encl. 17 a-c). Det. Cumberbatch worked from 5:45AM to 2:00AM on March 15, 2006, as the arresting officer of his field team. Det. Cumberbatch worked in plainclothes and worked with Det. Bannister. Det. Cumberbatch could not recall anything about the vehicle he was assigned to other than that it was unmarked. Det. Cumberbatch's memo book indicates that three individuals were placed under arrest at 9:45AM at 107 Belmont Avenue (encl. 16 a-b). Two of the arrests were for § 87(2)(b) and one was for § 87(2)(b). Det. Cumberbatch prepared the arrest reports for § 87(2)(b), § 87(2)(b) and § 87(2)(b). § 87(2)(b) was only charged with § 87(2)(b) (encl. 29 a). § 87(2)(b) physical condition was listed as "apparently normal." The report indicates that physical force was used to "overcome assault." Both § 87(2)(b) and § 87(2)(b) were charged with § 87(2)(b) (encl. 30 a, encl. 31 a). Their respective physical conditions were listed as "apparently normal." According to the documents, physical force was used against both to "overcome assault."

Shortly before 9:45AM on the date of the incident, Det. Cumberbatch was sitting in his vehicle with Det. Bannister. The rest of the field team was stationed nearby. Det. Cumberbatch was observing a man he referred to as "Defendant § 87(2)(b)." § 87(2)(b) handed "Defendant § 87(2)(b)" a glassine envelope of heroin in exchange for a sum of US currency. Prior to this, Det. Cumberbatch had also observed § 87(2)(b) make a similar transaction to another individual, who was arrested a few blocks away, but whose name Det. Cumberbatch could not recall. The transactions were taking place in front of the El Dorado restaurant. § 87(2)(b) had made numerous visits to a van parked directly in front of the restaurant, and was placing items in a small backpack that he then carried to the location of the transaction. Det. Cumberbatch's vehicle was positioned approximately two car lengths behind the van.

§ 87(2)(b) then entered the restaurant, and Det. Cumberbatch and Det. Bannister decided to follow him and place him under arrest. The officers radioed to Sgt. Bocina that they were entering. Det. Cumberbatch walked in first, and his partner followed him. Det. Cumberbatch observed § 87(2)(b) in the rear corner of the restaurant and started walking towards him. Det. Cumberbatch, however, was distracted when he saw § 87(2)(b) place a glassine envelope in the hand of "Defendant § 87(2)(b)." Det. Cumberbatch approached them with his shield out. § 87(2)(b) took the glassine envelope out of § 87(2)(b) hand and placed it in his own mouth. Det. Cumberbatch instructed § 87(2)(b) to "spit it out" and placed a grip on his neck. Det. Cumberbatch placed his thumb on one jawbone and his index and middle finger on the opposite jaw; the crease between his thumb and index finger was against § 87(2)(b) throat. § 87(2)(b) made a swallowing motion and Det. Cumberbatch understood that § 87(2)(b) had ingested the envelope. Det. Cumberbatch's hand was on § 87(2)(b) throat for a few seconds, during which time § 87(2)(b) did not display any difficulty in breathing.

Det. Cumberbatch grabbed § 87(2)(b) by the shoulders, turned him around such that he was facing away and pushed him to the ground. Det. Cumberbatch stated that § 87(2)(b) was resisting, "but not much." Det. Cumberbatch could not specifically state what § 87(2)(b) did to resist and at one point even said § 87(2)(b) was compliant. § 87(2)(b) was lying facedown on the ground and Det. Cumberbatch rearcuffed him. § 87(2)(b) was saying, "Yeah, I know you got me."

While Det. Cumberbatch finished handcuffing § 87(2)(b) he felt a slight tug on his gun. When he looked behind, § 87(2)(b) was about a foot away and was the only person in the near vicinity. Once § 87(2)(b) was handcuffed, Det. Cumberbatch stood up, walked to § 87(2)(b) grabbed him by the arms and

pushed him – face first – to the ground. Once on the ground, § 87(2)(b) resisted “a little.” § 87(2)(b) pulled his arms underneath his body and Det. Cumberbatch responded by instructing him to put them behind his back. § 87(2)(b) eventually complied and Det. Cumberbatch did not recall using any force to produce his arms. Det. Cumberbatch rearcuffed § 87(2)(b).

Det. Cumberbatch picked § 87(2)(b) off the ground by his arms and then sat him in a chair. An officer from the field team picked up § 87(2)(b) and stood him against the wall. Det. Cumberbatch did not know which officers arrested § 87(2)(b). Det. Cumberbatch did not know what role Det. Bannister played during the incident. Det. Cumberbatch further did not know at what point Sgt. Bocina arrived on the scene. Shortly after § 87(2)(b), § 87(2)(b) and § 87(2)(b) were handcuffed, the officers brought them to the prisoner van for transport to the 73rd Precinct station house. Det. Cumberbatch processed the arrests at the station house but did not remember § 87(2)(b) asking for or ever receiving medical attention. Det. Cumberbatch did not observe any injuries on § 87(2)(b) at any point, and, when asked how § 87(2)(b) may have sustained the possibly fractured rib and blunt trauma injuries documented in his medical records, Det. Cumberbatch said he had no idea, and that § 87(2)(b) “wasn’t hit.”

Det. Cumberbatch never hit § 87(2)(b) stomped on his face or pushed his head against a counter. Det. Cumberbatch did not observe any officers do so, either. Det. Cumberbatch denied that any other officer was involved with § 87(2)(b) apprehension. Det. Cumberbatch did not see an officer twist § 87(2)(b) arm once he was handcuffed.

Asked whether § 87(2)(b) attempted to assault him, Det. Cumberbatch replied that § 87(2)(b) was flailing his arms and was resisting. When asked again, Det. Cumberbatch denied that § 87(2)(b) attempted to assault him. When presented with a copy of § 87(2)(b) arrest report and asked to explain why he listed “to overcome assault” as the reason for using force, Det. Cumberbatch said, “He was resisting. I don’t remember what he was doing exactly. I didn’t really think about that.” Det. Cumberbatch otherwise had no explanation for the discrepancy.

Sgt. Roy Bocina of the Brooklyn North Narcotics Division:

Sgt. Bocina, a 5’7”-tall, 190-pound white male with black hair and glasses, was interviewed at the CCRB on July 18, 2006 (encl. 19 a-b). On March 15, 2006 Sgt. Bocina worked from 5:25AM to 2:00PM as the supervisor of his field team. Sgt. Bocina worked with PO Castle and Det. Cuozzo. Sgt. Bocina worked in plainclothes and was assigned to a gray Dodge Durango. Sgt. Bocina recorded in his memo book that at 9:45AM three individuals had been placed under arrest inside of 109 Belmont Avenue (encl. 18 a-b).

Sgt. Bocina stated that shortly before 9:45AM Det. Cumberbatch and Det. Bannister were set up outside of 109 Belmont Avenue to observe possible narcotics transactions. Sgt. Bocina was sitting in his parked car around the corner. During the morning the field team had made several arrests for possession of a controlled substance. At around 9:45AM Det. Cumberbatch radioed Sgt. Bocina, and told him that they had observed several transactions, and that two main dealers were inside a restaurant, later known to Sgt. Bocina as the El Dorado. Sgt. Bocina instructed Det. Cumberbatch and Det. Bannister to do a “walk on.” Sgt. Bocina explained that during a walk on, two officers who “fit in” with the neighborhood walk into an establishment, stand near the exits to secure the area, and then pull out their shields and identify themselves, to prevent the suspects from escaping before the rest of the field team can arrive. Sgt. Bocina was nearby, but drove around the corner to give the field team about thirty seconds to freeze the location.

Sgt. Bocina entered the restaurant and saw officers from his field team struggling with two males who would later be placed under arrest and charged with criminal sale of a controlled substance. When showed a picture of § 87(2)(b) Sgt. Bocina confirmed that § 87(2)(b) was not one of those individuals struggling, but confirmed that he was later arrested for § 87(2)(b). Based on the nature of their charges, the investigation has identified the struggling males as § 87(2)(b) and § 87(2)(b). Sgt. Bocina reported that Det. Castle, Det. Cuozzo and Det. Bannister were trying to grab the two dealers’ hands and pull them behind their backs. Sgt. Bocina stated that Det. Nagrowski and Det. Morrissey were assigned to the prisoner van, and did not leave the van to enter the restaurant. § 87(2)(b) and § 87(2)(b) were pushing the officers away. Sgt. Bocina helped the officers by grabbing one arm and

holding it for an officer to handcuff, but did not assist any further. Sgt. Bocina believed that both of the dealers were saying something, although he could not recall what.

As he held the perpetrator's arm, Sgt. Bocina saw something make a fast motion in his peripheral vision. Sgt. Bocina turned around and saw Det. Cumberbatch struggling with § 87(2)(b) on the ground. Sgt. Bocina did not see how § 87(2)(b) got to the ground. Sgt. Bocina quickly ran over, pulling his handcuffs out of his belt as he did so. § 87(2)(b) was lying on his stomach, and Det. Cumberbatch was kneeling over him, trying to pull his arms behind his back. Sgt. Bocina at first did not recall if § 87(2)(b) was flailing his arms or hiding his arms underneath his body, but later in the interview recalled that § 87(2)(b) was lying in top of his arms. Sgt. Bocina pulled one of § 87(2)(b) arms from underneath him, and Det. Cumberbatch did the same to the other. Either Sgt. Bocina or Det. Cumberbatch handcuffed § 87(2)(b). Sgt. Bocina did not recall what § 87(2)(b) was saying. Sgt. Bocina never saw Det. Cumberbatch punch or kick § 87(2)(b).

Once in handcuffs, § 87(2)(b) got to his feet, although Sgt. Bocina did not remember how. Sgt. Bocina stated that, because of the large crowd of civilians in the restaurant, he had the officers from the field team bring the three defendants outside immediately. Sgt. Bocina recalled needing to keep members of the crowd away from other officers, and considered the crowd "hostile," but could not cite specific behavior that led him to this conclusion. Sgt. Bocina denied twisting § 87(2)(b) arm, and denied seeing another officer do so. Sgt. Bocina did not see any officer push § 87(2)(b) head to the counter and did not see Det. Cumberbatch place a hand on anyone's throat.

Sgt. Bocina denied having any interactions with § 87(2)(b) at the 73rd Precinct station house. Sgt. Bocina knew that § 87(2)(b) went to the hospital for medical attention, but did not observe any injuries on him and did not know what type of treatment he received. When informed that § 87(2)(b) was diagnosed with multiple blunt trauma injuries and a possible fractured rib, Sgt. Bocina had no direct explanation. Sgt. Bocina did explain, however, that, according to Det. Castle and Det. Cuozzo, while at the § 87(2)(b) Emergency Room § 87(2)(b) repeatedly threw himself to the floor. Sgt. Bocina was not at the hospital to witness this. Sgt. Bocina is the only officer from his field team who wears glasses.

PO Christopher Castle of the Brooklyn North Narcotics Division:

Det. Castle, a 6'1"-tall, 180-pound white male with brown hair was interviewed at the CCRB on August 31, 2006 (encl. 21 a-b). Det. Castle's rank and shield number as of March 15, 2006 was police officer, 5317. On March 15, 2006, PO Castle was assigned to the team leader's vehicle (a gray Dodge Durango) with Sgt. Bocina and Det. Cuozzo from 5:33AM to 6:30PM. Det. Castle was working in plainclothes. According to Det. Castle's memo book, three individuals were placed under arrest at 9:45AM inside of 109 Belmont Avenue (encl. 20 a-b). At 10:15AM, Det. Castle was at the 73rd Precinct. At 1:30PM, Det. Castle was en route to § 87(2)(b) with an injured perpetrator.

Det. Castle's account of the incident prior to entering the El Dorado was consistent with that of Sgt. Bocina. When Det. Castle entered, he saw Det. Bannister struggling with a 6'3"-tall, 250-pound black male wearing green camouflage pants about seven feet from the front door. Det. Castle did not know the black male's name. This pedigree information does not match that of any of the three defendant's arrested at the time and place of the incident § 87(2)(b) the tallest of the defendants, is 5'9"). § 87(2)(b) arrest report, however, indicates he was wearing a camouflage shirt and camouflage pants, whereas the arrest reports of § 87(2)(b) and § 87(2)(b) indicate they were both wearing blue jeans. Det. Castle said that § 87(2)(b) was flailing his arms, and pushing Det. Bannister away. Det. Bannister was trying to grab § 87(2)(b) arms to handcuff him. Det. Castle immediately assisted Det. Bannister by grabbing § 87(2)(b) shoulder and pushing him down to the ground, onto his stomach. Det. Castle said § 87(2)(b) offered minor resistance once on the ground but that he and Det. Bannister were able to handcuff him within a few seconds. Det. Castle described § 87(2)(b) demeanor after having been cuffed as "aggravated and agitated." Det. Castle never saw an officer kick § 87(2)(b) or place a hand near his throat, and Det. Castle denied that he used any additional force against him.

Det. Castle did not provide any new information about the apprehension of the other two defendants. Det. Castle did not remember seeing § 87(2)(b) on March 15, 2006 until they were inside the 73rd Precinct station house. Det. Castle remembered § 87(2)(b) because he said he would file a complaint. Det. Castle

believed that, based on his experience, § 87(2)(b) was under the influence of heroin because he was “nodding out.” § 87(2)(b) was complaining of an injury to his ribs. Det. Castle was assigned to escort § 87(2)(b) to § 87(2)(b) where they arrived at approximately § 87(2)(b).

Det. Castle stated that the emergency room doctor was getting “fed up” with § 87(2)(b) because he kept moving his head forward and sliding out of his chair. § 87(2)(b) was placed in another chair, and he slid out of it onto the floor. Det. Castle said that § 87(2)(b) treatment consisted of receiving X-rays of his ribs. Det. Castle did not hear § 87(2)(b) complain of any other injuries and did not observe any injuries on him at all. Det. Castle never saw § 87(2)(b) fall to the floor at any point. At the end of his tour, around 6:30PM, Det. Castle was relieved by another officer who took custody of § 87(2)(b).

Det. Angelo Cuozzo of the Brooklyn North Narcotics Division:

Det. Cuozzo, a 5’11”-tall, 220-pound white male with brown hair and a mustache, was interviewed at the CCRB on September 21, 2006 (encl. 22 a-b). He was promoted from police officer (shield 14638) since the date of the incident. On March 15, 2006, Det. Cuozzo worked from 6:00AM to 2:27PM as an extra in the leader’s car with Sgt. Bocina and PO Castle. Det. Cuozzo worked in plainclothes and was assigned to a Dodge Durango.

Det. Cuozzo’s account of the incident prior to entering the El Dorado was consistent with that of Sgt. Bocina. Det. Cuozzo heard an officer make a general comment about someone swallowing drugs, but Det. Cuozzo could not remember which officer made the statement, or to whom he would have been referring. Det. Cuozzo approached a male wearing a green shirt and camouflage pants. The investigation has identified this individual as § 87(2)(b) as his arrest reports shows him wearing camouflage pants and a matching shirt, whereas § 87(2)(b) and § 87(2)(b) were wearing blue jeans. Det. Cuozzo admittedly did not recall the details about how he apprehended § 87(2)(b). He could not remember how, where, or in what position § 87(2)(b) was handcuffed, but recalled that § 87(2)(b) was trying to pull away from him. Det. Cuozzo did not remember if other officers were helping him restrain § 87(2)(b). Det. Cuozzo, however, definitively denied punching or kicking § 87(2)(b). Det. Cuozzo also could not remember if he helped restrain any other suspects. Det. Cuozzo did not see other officers punch or kick any of the prisoners and never saw Det. Cumberbatch place a hand on any individual’s throat.

Det. Cuozzo recalled seeing § 87(2)(b) at the restaurant, but did not have any interactions with him at the scene or later on at the station house. Det. Cuozzo did not recall ever seeing injuries on § 87(2)(b) and did not remember if he escorted § 87(2)(b) to the hospital.

Det. Ronald Bannister of the Brooklyn North Narcotics Division:

Det. Bannister, a 6’2”-tall, 250-pound black male with black hair, freckles and a beard was promoted to detective from police officer (shield 13431) since the date of the incident. He was interviewed at the CCRB on October 26, 2006 (encl. 24 a-b). On March 15, 2006, Det. Bannister was assigned to a vehicle with Det. Cumberbatch for a tour of duty beginning at 5:33AM and ending at 2:00PM. Det. Bannister was working in plainclothes, was assigned to an unmarked vehicle and does not have any relevant memo book entries.

Det. Bannister did not recall the incident. Det. Bannister was familiar with the El Dorado Restaurant. Det. Bannister did not recall making any arrests inside the El Dorado around the date of the incident, and denied that he has been involved in any arrest situations at the restaurant at any other time. A description of the incident did not refresh Det. Bannister’s memory and he did not recognize a photograph of § 87(2)(b). Det. Bannister has no memo book entries around the time of the incident.

Medical Records pertaining to the treatment of § 87(2)(b)

The ambulance call report contains the following narrative, “§ 87(2)(b) old male patient found in a precinct cell. Upon arrival patient complains of dizziness after police officer hit him during arrest” (encl. 8 a). There is no presumptive diagnosis listed; § 87(2)(b) chief complaint is listed as: “Cop hit me.”

According to § 87(2)(b) medical records from § 87(2)(b) his chief complaint was the following: “Patient states he was beaten up in jail. Complains of right jaw pain, left rib pain and head pain after being

kicked in head” (encl. 25 a-p). Another form lists his chief complaint as, “pain to left jaw, head and ribs after allegedly being kicked and beat up by officer.” The records also note that § 87(2)(b) had difficulty opening his mouth and that there was a small abrasion above his right eyelid. The final diagnosis lists multiple blunt injuries and a possible fracture to the left eighth rib. X-rays were taken of § 87(2)(b) head, and there was no evidence of a fracture. There is no record of a chest X-ray.

The pre-arraignment screening form did not contain any relevant information (encl. 26 a-d).

NYPD Documents:

According to the tactical plan for the 73rd Precinct module of the Brooklyn North Narcotics Division, Sgt. Bocina was assigned as the team leader in a gray Dodge with PO Castle and PO Cuozzo (encl. 27). PO Bannister and Det. Cumberbatch were assigned to a tan Nissan Maxima. Det. Nagrowski and PO Morrissey were assigned to the prisoner van, a white Ford.

§ 87(2)(b) and § 87(2)(b) were all signed into the 73rd Precinct holding cells at 11:00AM (encl. 28). § 87(2)(b) left for § 87(2)(b) at § 87(2)(b). § 87(2)(b) and § 87(2)(b) left for Central Booking at 2:30PM.

Det. Cumberbatch prepared property vouchers for items recovered from § 87(2)(b) and § 87(2)(b) (encl. 32 a-c). No voucher indicates that any contraband was recovered from the defendant.

OCA Records:

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Complainant History:

§ 87(2)(b) has not been named in any prior CCRB complaints (encl. 7). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Officer Histories:

During his sixteen-year tenure, Det. Cumberbatch has received one prior substantiation from the CCRB, in case 200403295, for an allegation of threat of force (encl. 2). The Board recommended instructions, and the NYPD upheld the recommendation.

During his ten-year tenure, Sgt. Bocina has received no prior substantiated allegations from the CCRB, § 87(4-b) § 87(2)(g)

During his five-year tenure PO Castle has received no prior substantiated allegations from the CCRB (encl. 5). During his ten-year tenure Det. Cuozzo has received no prior substantiated allegations from the CCRB (encl. 6). During his twelve-year tenure Det. Bannister has received no prior substantiated allegations from the CCRB (encl. 4).

Conclusions and Recommendations

Officer Identification:

§ 87(2)(b) and § 87(2)(b) both delineate consistently between the two officers who first entered the restaurant. They said one was shorter and had a medium build. The other was taller, had a stockier build and freckles. Det. Cumberbatch closely matches the description of the former officer, and Det. Bannister that of the latter. § 87(2)(g)

Det. Cumberbatch conceded that he brought § 87(2)(b) to the ground, even though § 87(2)(b) attributed that action to a tall, stocky white male. § 87(2)(g)

Similarly, Det. Cumberbatch matches the description of the officer who used the majority of the force against § 87(2)(b) and Sgt. Bocina said he saw Det. Cumberbatch struggling with § 87(2)(b). That force has therefore been pleaded against Det. Cumberbatch. Sgt. Bocina matches the description of the officer who twisted § 87(2)(b) handcuffed arms, and Sgt. Bocina admitted to using some force to restrain § 87(2)(b). § 87(2)(g)

Det. Bannister matches § 87(2)(b) description of the officer who allegedly kicked § 87(2)(b). Det. Cuozzo and Det. Castle also observed Det. Bannister struggling with § 87(2)(b). Det. Bannister has accordingly been charged with using force against § 87(2)(b). § 87(2)(g)

Facts not in Dispute:

§ 87(2)(g) it is not in dispute that Det. Cumberbatch used some physical force against § 87(2)(b) and § 87(2)(b) and that Sgt. Bocina used force against § 87(2)(b). Det. Cumberbatch also conceded that he placed a grip on § 87(2)(b) throat. Det. Castle and Det. Cuozzo also conceded to using some force against § 87(2)(b).

Facts in Dispute:

§ 87(2)(g)

Credibility Analysis:

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

Allegations:

Allegation A) Detective Virgil Cumberbatch stopped § 87(2)(b) **and** § 87(2)(b) Det. Cumberbatch stated that he observed § 87(2)(b) hand § 87(2)(b) a glassine envelope in exchange for US currency. § 87(2)(g) § 87(2)(b) and § 87(2)(b) deny the allegations. § 87(2)(g)

Furthermore, the property vouchers for § 87(2)(b) § 87(2)(b) and § 87(2)(b) did not show any drugs as having been discovered. While Det. Cumberbatch accuses § 87(2)(b) as having swallowed a glassine envelope, he also went to lengths to describe the numerous drug transactions § 87(2)(b) has engaged in, during which he allegedly transferred drugs. According to the property voucher, no drugs were found on § 87(2)(b) person, and Det. Cumberbatch made no indication that drugs were recovered from the van.

§ 87(2)(g) [REDACTED]

Allegation B) Force: Detective Virgil Cumberbatch used a chokehold against § 87(2)(b) Patrol Guide procedure 203-11 explicitly prohibits the use of a chokehold, which includes “any pressure applied to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air” (encl. 1 a). According to this language, it is not necessary that the victim’s breathing be hindered for the action to be considered a chokehold. Det. Cumberbatch conceded that the crease between his thumb and index finger pressed against § 87(2)(b) throat. § 87(2)(g)

§ 87(2)(g) [REDACTED]

Det. Cumberbatch has been a member of the NYPD for sixteen years. The Patrol Guide is clear that chokeholds are not permitted. § 87(2)(g) [REDACTED]

§ 87(2)(g)

Allegation C) Force: Detective Virgil Cumberbatch used physical force against § 87(2)(b)

§ 87(2)(b) stated that a stocky, tall white male officer threw him to the ground. That description matches no officer known to be on the scene, although Det. Cumberbatch admitted to pushing § 87(2)(b) to the ground. § 87(2)(g)

Patrol Guide procedure 203-11 prohibits an officer from using excessive force (encl. 1 a-b), § 87(2)(g)

Allegation D) Force: Detective Virgil Cumberbatch used physical force against § 87(2)(b)

§ 87(2)(g)

Allegation E) Force: Sergeant Roy Bocina used physical force against § 87(2)(b)

Sgt. Bocina conceded to using force to pull § 87(2)(b) arms from underneath his body in order to handcuff him. § 87(2)(b) however, alleges that, after he was already in handcuffs, Sgt. Bocina twisted his arm, which caused him a great deal of pain. § 87(2)(g)

Allegation F) Force: Police Officer Ronald Bannister used physical force against § 87(2)(b)

§ 87(2)(b) alleges that an officer was kicking him after he was thrown to the ground. Although he did not see the officer, § 87(2)(b) corroborated his claim, identifying the officer as Det. Bannister. Det. Bannister had no recollection of the incident. § 87(2)(g)

Allegation G) Force: Police Officer Christopher Castle used physical force against § 87(2)(b)

Allegation H) Force: Police Officer Angelo Cuozzo used physical force against § 87(2)(b)

Det. Cuozzo and Det. Castle do not match the descriptions of any officers who allegedly used force against the victims, although they acknowledged their roles in restraining § 87(2)(b). Det. Castle described a level of force that primarily entailed grabs and holds, and there was no suggestion that the force was excessive. Although Det. Cuozzo's recollection was not clear, he denied striking or kicking § 87(2)(b)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: